

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Martin Jerome LEE

Art Unit: 1743

Application No.: 09/808,039

Confirmation No.: 4869

Examiner: S. SIEFKE

Filed: March 15, 2001

Washington, D.C.

For: KIT AND METHOD FOR DETECTING FOOD ALLERGIES

Atty.'s Docket: LEE=75

Date: May 19, 2004

Customer Window, Mail Stop
 THE COMMISSIONER OF PATENTS AND TRADEMARKS
 Arlington, VA 22202

Sir:

Transmitted herewith is a [XX] REPLY and TERMINAL DISCLAIMER in the above-identified application.

[XX] Small entity status of this application under 37 CFR 1.9 and 1.27 has been established by a verified statement previously submitted

[] A verified statement to establish small entity status under 37 CFR 1.9 and 1.27 is enclosed.

[XX] Terminal Disclaimer fee of \$55.00 for small entity is enclosed.

The fee has been calculated as shown below:

(Col. 1)		(Col. 2)		(Col. 3)	SMALL ENTITY		OR	OTHER THAN SMALL ENTITY	
	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA EQUALS	RATE	ADDITIONAL FEE		RATE	ADDITIONAL FEE
TOTAL	* 16	MINUS	** 20	0	x 9	\$		x 18	\$
INDEP.	* 2	MINUS	*** 3	0	x 43	\$		x 86	\$
FIRST PRESENTATION OF MULTIPLE DEP. CLAIM					+ 145	\$		+ 290	\$
					ADDITIONAL FEE TOTAL		OR	TOTAL	
					\$			\$	

* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.

** If the "Highest Number Previously Paid for" IN THIS SPACE is less than 20, write "20" in this space.

*** If the "Highest Number Previously Paid for" IN THIS SPACE is less than 3, write "3" in this space.

The "Highest Number Previously Paid For" (total or independent) is the highest number found from the equivalent box in Col. 1 of a prior amendment of the number of claims originally filed.

[XX] Conditional Petition for Extension of Time

If any extension of time for a response is required, applicant requests that this be considered a petition therefor.

[] It is hereby petitioned for an extension of time in accordance with 37 CFR 1.136(a). The appropriate fee required by 37 CFR 1.17 is calculated as shown below:

Small Entity

Response Filed Within

[] First - \$ 55.00
 [] Second - \$ 210.00
 [] Third - \$ 475.00
 [] Fourth - \$ 740.00

Month After Time Period Set

Other Than Small Entity

Response Filed Within

[] First - \$ 110.00
 [] Second - \$ 420.00
 [] Third - \$ 950.00
 [] Fourth - \$ 1,480.00

Month After Time Period Set

[] Less fees (\$) already paid for month(s) extension of time on

[] Please charge my Deposit Account No. 02-4035 in the amount of \$

[XX] Credit Card Payment Form, PTO-2038, is attached, authorizing payment in the amount of \$ 55.00

[] A check in the amount of \$ is attached (check no.).

[XX] The Commissioner is hereby authorized and requested to charge any additional fees which may be required in connection with this application or credit any overpayment to Deposit Account No. 02-4035. This authorization and request is not limited to payment of all fees associated with this communication, including any Extension of Time fee, not covered by check or specific authorization, but is also intended to include all fees for the presentation of extra claims under 37 CFR §1.16 and all patent processing fees under 37 CFR §1.17 throughout the prosecution of the case. This blanket authorization does not include patent issue fees under 37 CFR §1.18.

BROWDY AND NEIMARK

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By: 
 Sherman Neimark
 Registration No. 20,520



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY.'S DOCKET: LEE=75

In re Application of:)	Art Unit: 1743
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Martin Jerome LEE)	Examiner: S. SIEFKE
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Appln. No.: 09/808,039)	Washington, D.C.
)	
Date Filed: March 15, 2001)	Confirmation No. 4869
)	
For: A KIT AND METHOD FOR)	May 19, 2004
DETECTING FOOD ALLERGIES)	

**REPLY TO OFFICE ACTION OF APRIL 28, 2004:
SUBMISSION OF TERMINAL DISCLAIMER, AND REMARKS**

U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window, **Mail Stop** ____
Crystal Plaza Two, Lobby, Room 1B03
Honorable Commissioner for Patents
Arlington, Virginia 22202

Sir:

Replying to the Office Action mailed April 28, 2004, applicant attaches herewith a Terminal Disclaimer which should place the present application in condition for formal allowance.

The claims in the application remain as claims 1-16, or are now 1-15. No amendments are presented. Applicant's claims define over the prior art as is evident from the Office Action. In view of the Terminal Disclaimer submitted herewith, the present application should now be in formal condition for allowance, and such is respectfully requested.

The Office Action indicates that 1-15 are presently pending. Applicant agreed orally with the examiner to the deletion of claim 16 without prejudice to applicant's rights, including the rights provided §§121 and 120, to proceed with a divisional application without any penalty whatsoever. This deletion was to have been made by examiner's amendment. Applicant understands that claim 16 either has already been deleted or will be deleted by Examiner's Amendment.

Claims 1-15 have been rejected on the basis of obviousness-type double patenting over claims 1-15 of U.S. patent 6,596,502. While this rejection is respectfully traversed, it is nevertheless easily overcome by the submission of a Terminal Disclaimer.

Accordingly, applicant submits herewith such a Terminal Disclaimer executed by undersigned attorney of record, whereby there is no need according to MPEP 1490 to comply with 37 CFR 3.73(b).

Applicant respectfully requests withdrawal of the rejection.

No rejections are imposed on the basis of any prior art or under §112. Accordingly, applicant understands that applicant's claims are deemed by the PTO to be in full

Appln. No. 09/808,039
Amd. dated May 19, 2004
Reply to Office Action of April 28, 2004

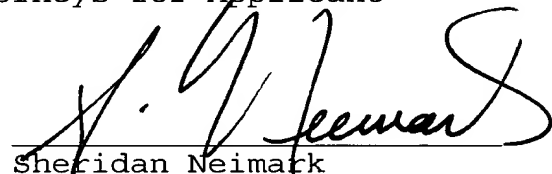
conformance with §112 and to define patentable subject matter under §§102 and 103.

Applicant believes that all issues have been addressed and resolved above, whereby the present application should now be in condition for formal allowance. Accordingly, applicant respectfully requests early formal allowance.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
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